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 3 San Jose, CA 95130
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FILED

2008 FEB -7 P 3:03

RICHARD W. WICKING
 CLERK
 U.S. DISTRICT COURT
 ND. DIST. OF CA. S.D.



Counsel for Plaintiff Kaiwen Cai

IN THE UNITED STATES DISTRICT COURTS
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 Kaiwen Cai, and A096372636) Case No.: C07-04886 HRL

8 Plaintiff,)

9 vs.)

10 PAUL D. CLEMENT, Acting Attorney)

11 General Of the United States;)

12 MICHAEL CHERTOFF, Secretary,)

13 Department of Homeland Security;)

14 EMILION GONZALEZ, Director,)

15 U.S.Citizenship and Immigration Services;)

16 CHRISTINA POULOS, Director, USCIS)

17 California Services)

18 Defendants)

20 **Motion for Default Judgment**

21 Plaintiff, Kaiwen Cai, by and through its Counsel, moves this Court for judgment against
 22 Defendant Paul D. Clement, Michael Chertoff, Emilion Gonzalez, Christina Poulos, pursuant to
 23 Rule 55 of the Federal Rules of Civil Procedure("FRCP"). The Plaintiff states as follows:

- 24 1. On September 21, 2007, Plaintiff filed with the Clerk of this Court a Compliant for Writ
 25 of Mandamus in the above-captioned action against all defendants named above.
- 26 2. The Summons was served upon all named defendants on or about October 15th, 2007 via
 27 certified priority mails and a proof of service was duly filed.

- 1 3. Plaintiff's Request for Entry of Default was filed on or about 01/31/2008 and a default
2 was entered by court clerk.

3 **Relief Sought**

- 4 4. In compliance with FRCP Rule 55(e), Plaintiff requests a judgment by the court to issue a
5 Writ of Mandamus to compel Defendants and those acting under them to perform their
6 duty to adjudicate Plaintiff's I-485 applications, e.g. application for adjustment of status,
7 and to grant Attorney's fees and costs of Court to Plaintiffs under the Equal Access to
8 Justice Act and any further relief as this court deems proper under the circumstances.
9 5. The total Attorney fees and costs of Court is \$4,258. Details please see attached
10 Declaration for Fees and Costs and its attachments.

11 **Plaintiff's Rights to the Relief**

- 12 6. The Court has authority to issue a Writ of Mandamus when Plaintiffs show they have a
13 clear right to relief, the Defendants have a clear non-discretionary duty to act, and no
14 other adequate remedy is available. Nyaga v. Ashcroft, 186 F. Supp. 2d 1244, 1252
15 (2002) *rev'd on other grounds*, 323 F. 3d 906 (11th Cir. 2003), citing Heckler v. Ringer,
16 466 U.S. 602 (1984); District Lodge No. 166, Intern. Ass'n of Machinists and Aerospace
17 Workers, AFL-CIO v. TWA Services, Inc., 731 F. 2d 711, 717 (11th Cir. 1984).
18 7. A person has a clear right when they fall within the "Zone of Interests" of a particular
19 statute. Association of Data Processing Service Organizations, Inc. vs. Camp, 397 U.S.
20 150 (1970). Plaintiff is an applicant of I-485 adjustment of status under INA section 245
21 due to his marriage to a US citizen spouse. He is within the "Zone of Interests", as such,
22 the defendants owe him a non-discretionary duty to adjudicate his application. In fact,
23 his case was processed and he was interviewed on or about December 20, 2005.
24 8. More than two years has lapsed since the interview and the defendants failed to
25 adjudicate Plaintiff's application, a delay that is beyond reasonableness in any measure.
26 9. Plaintiff has made abundant efforts in seeking to have the defendants to adjudicate his
27 case but such efforts were futile. Addition to evidence submitted as attachment to
28 Plaintiff's original complaint, in July 2007, Plaintiff retained an attorney to write letter to

1 USCIS California Center to urge prompt adjudication. (See Exh. 2, copies of Attorney
2 Xia Zhao's letters). Such request was never properly replied, but instead, a boilerplate
3 inquiry response was sent to Attorney Zhao (See Exh. 3, copy of General Inquiry
4 Response to Xia Zhao). Recent online status inquiry reveals that Plaintiff's case is still
5 being processed (See Exh. 4, a print out of USCIS case status inquiry). Plaintiff has
6 exhausted any administrative remedies that may exists.

7 10. WHEREFORE, Plaintiff requests this court to grant a Writ of Mandamus to compel
8 Defendants and those acting under them to perform their duty to adjudicate Plaintiff's I-
9 485 applications promptly, to grant Attorney's fees and costs of Court to Plaintiffs for the
10 amount of \$4,258 and any further relief as this court deems proper under the
11 circumstances.

12 Dated: 02/05/08

13 Respectfully Submitted:



14 15 16 Xia Zhao, SBN221100
17 On Behalf of Plaintiff
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EXHIBIT 1

Xia Zhao, SBN221100, CA
4950 Hamilton Ave., Ste. 209
San Jose, CA 95130
Tele: 408-898-2535
Fax: 408-866-7283

Counsel for Plaintiff Kaiwen Cai

IN THE UNITED STATES DISTRICT COURTS
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Kaiwen Cai, and A096372636) Case No.: C07-04886 HRL
Plaintiff,)
vs.)
PAUL D. CLEMENT, Acting Attorney)
General Of the United States;)
MICHAEL CHERTOFF, Secretary,)
Department of Homeland Security;)
EMILION GONZALEZ, Director,)
U.S.Citizenship and Immigration Services;)
CHRISTINA POULOS, Director, USCIS)
California Services)
Defendants)

DECLARATION OF XIA ZHAO FOR ATTORNEY FEES AND COSTS

I, XIA ZHAO, do declare as follows:

1. I am an attorney at law, a member in good standing of the bar of this Court, and counsel of plaintiff Kaiwen Cai in the above-entitled case.
 2. If called upon to testify, I could and would competently testify to personal knowledge of the following facts.

1 3. The Attorney fees and costs of the court totals \$4,258 for this case. (Please see
2 attached billing statement).

3
4 Dated: 02/05/08

5 Respectfully Submitted:

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7 Xia Zhao, SBN221100

8 On Behalf of Plaintiff

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PACIFIC CROSSING LAW OFFICE

500 AIRPORT BLVD, SUITE 100	4950 Hamilton Ave., Ste 209	Phone: 650-579-6686 408-898-2535
BURLINGAME, CA 94010	San Jose, CA 95130	Fax: 408-866-7283
		E-mail: info@pacificcrossing.net

Statement**Statement #:****Date:****Customer ID:**

Date	Time Billed	Rate \$/hr	Description	Amount	Payment	Balance
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Declaration for Fees and Costs

7/19/2007	0.6	\$ 250	review client's file			\$150
7/19/2007	0.6	\$ 250	write first letter to the USCIS			\$150
7/23/2007	0.1	\$ 75	answer client's call			\$8
7/23/2007	0.3	\$ 75	prepare form G-28 for client to sign			\$23
7/25/2007	0.1	\$ 75	mail letter to USCIS			\$8
7/26/2007	0.1	\$ 75	answer client's call			\$8
7/29/2007	0.2	\$ 250	phone conversation with client			\$50
8/6/2007	0.3	\$ 250	write second letter to the USCIS			\$75
	0.3	\$ 75	prepare G-28 for Jenny to sign			\$23
8/17/2007	0.8	\$ 250	edit, revise complaint			\$200
8/20/2007	0.1	\$ 75	answer client's call			\$8
9/16/2007	6.5	\$ 250	research, review case file, draft complaint			\$1,625
			phone conversation with client re status of his case			
10/10/2007	0.3	\$ 250				\$75
10/13/2007	0.1	\$ 75	handle summons from the court			\$8
10/15/2007	0.3	\$ 75	mail summons and compliant to Defendants			\$23
11/1/2007	0.1	\$ 75	via priority mail			\$8
12/13/2007	0.1	\$ 75	mail return of service to the court			\$8
12/16/2007	0.2	\$ 250	handle letter from the court re CMC date fill out form Consent to Proceed Before A United States Magistrate Judge			\$50
12/18/2007	0.1	\$ 75	mail the above form to the court			\$8

REMITTANCE					
Customer ID:		Statement #:		Date:	
12/26/2007	0.1 \$	75	call the court re the above form		\$8
1/6/2008	0.1 \$	75	handle letter from the court re change of CMC		\$8
1/18/2008	0.3 \$	250	phone conversation with client re status of his case		\$75
1/16/2008	0.2 \$	250	phone conversation with client re status of his case		\$50
1/22/2008	1.5 \$	250	research, draft Request for Entry of Default		\$375
1/23/2008	0.5 \$	250	edit, revise Request for Entry of Default		\$125
1/28/2008	2 \$	250	research, draft motion for default judgment		\$500
1/29/2008	0.6 \$	250	edit and revise motion		\$150
2/4/2008	0.3 \$	75	arrange motion and exhibits		\$23
Costs					
9/21/2007			civil filing fee		\$350
9/21/2007			service charge for filing the compliant		\$25
			priority mailing fee for mailing compliant and summons to defendants (\$4.60x3=\$13.80)		\$14
10/15/2007			filing Consent to Proceed Before A United States Magistrate Judge		\$25
12/28/2007			service charge for filing Request for Entry of Default		\$30
1/24/2007				Total	\$4,258

EXHIBIT 2

July 19, 2007

Office of Chief Counsel, U.S. Citizenship and Immigration Services
Department of Homeland Security
California Service Center
P.O. Box 30111
Laguna Niguel, CA 92607-0111

Re: Kaiwen Cai, A096372636

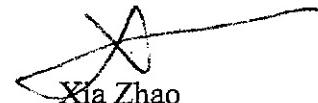
Dear Chief Counsel, USCIS:

We represent Kaiwen Cai in his immigration matters. Kaiwen Cai has patiently waited to have his application to be adjudicated since September 11, 2005. It has now been almost two years since Kaiwen Cai filed his application, and it has yet to be adjudicated. This unreasonable delay has impaired Cai's ability to make important decisions in his personal and professional life, and has deprived him of the right to permanent residency and the peace of mind to which he is entitled.

We have tried on numerous occasions to resolve this delay without success; therefore, we currently are preparing to file a Writ of Mandamus in federal district court. I have attached a copy of the Writ of Mandamus that we are preparing to file for your convenience. If we do not receive a response from you within 15 days, we will have no choice but to file a Writ of Mandamus with the U.S. District Court on Aug 3, 2007. We will also seek payment for attorney's fees upon our prevailing on the motion.

Thank you for your prompt attention to this matter.

Very truly yours,



Xia Zhao

Enclosures: copy of application/petition/receipt

Pacific Crossing Law Office
500 Airport Blvd., Suite 100
Burlingame, CA 94010
Tel: 650-579-6686; Fax: 650-579-6617
www.pacificcrossing.net

August 6, 2007

Office of Chief Counsel, U.S. Citizenship and Immigration Services
Department of Homeland Security
California Service Center
P.O. Box 30111
Laguna Niguel, CA 92607-0111

Re: Kaiwen Cai, A096372636

Dear Chief Counsel, USCIS:

Attached please find the required original signature of the above referenced applicant, Jenny Su. Please reply to our request of adjudication of application (see attachment). If we still don't receive the response from you, we will file the Writ of Mandamus in federal district court on September 1, 2007.

Should you have any questions regarding the particular above, please feel free to contact us.

Very truly yours,



Xia Zhao

Enclosures: copy of the previous letter

EXHIBIT 3

U.S. Department of Homeland Security



**U.S. Citizenship
and Immigration
Services**

8/17/07

XIA ZHAO
RE: KAIWEN CAI
500 AIRPORT BLVD STE 100
BURLINGAME CA 94010

A-Number / Receipt Number:

MACO4 14 354007

Thank you for your recent inquiry to the California Service Center (CSC) via fax or letter for information regarding your case status. USCIS has launched a new referral tracking system through our National Customer Service Center. To ensure that customer inquiries are handled as effectively and quickly as possible, we ask that you call our National Customer Service Center, which is available Monday through Friday, 8:00 AM – 5:00 PM, PST at **1-800-375-5283**. The National Customer Service Center will track your inquiry with us to resolution.

Please note that we will continue to accept expedite requests via fax at **949-389-3441**. Expedite requests must meet the criteria noted on our website at <http://www.uscis.gov/portal/site/uscis> - click on the “My Case is Pending” link.

Most importantly, USCIS provides a case-status online inquiry service on our website at www.uscis.gov – just click on the “Case Status & Processing Dates” link. Finally, the USCIS website also includes a chart that reports current processing dates for particular applications and petitions in relation to the date the application or petition was filed. The USCIS processes cases in the order received.

If you submitted a change of address with your inquiry, it has been handled locally. Please note: The law requires nearly all non-U.S. citizens to report a change of address within 10 days of moving by completing a Form AR-11. Form AR-11 can be filed electronically by visiting the USCIS website at www.uscis.gov or by mailing the paper form to the address shown on the bottom of the form. For your convenience, we have attached a Form AR-11 to this letter.

Thank you.

EXHIBIT 4

Case Status Search

Receipt Number: msc0534727095

Application Type: I485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS

Current Status:

Case received and pending.

On September 14, 2005, we received this I485 APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS, and mailed you a notice describing how we will process your case. Please follow any instructions on this notice. We will notify you by mail when we make a decision or if we need something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when yours will be done. This case is at our NATIONAL BENEFITS CENTER location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).